

COM-Inst.Aff./002

Brussels, 24 September 1999

**OPINION**

of the

Committee of the Regions

of 15 September 1999

on the

**Commission report to the European Council**

**"Better lawmaking 1998 - a shared responsibility"**

The Committee of the Regions

**HAVING REGARD TO** the Treaty establishing the European Community (EC Treaty) and, in particular, Article 5 thereof;

**HAVING REGARD TO** the Amsterdam Treaty, and in particular, Protocol No. 7 on the implementation of the principles of subsidiarity and proportionality and Declaration No. 39 on the quality of the drafting of Community legislation;

**HAVING REGARD TO** the conclusions of the Vienna European Council of 11 and 12 December 1998, which stated that the future "Better lawmaking" reports should be submitted in time to allow an detailed analysis, not least within the Committee of the Regions;

**HAVING REGARD TO** the Commission's report to the European Council "Better lawmaking 1998 - a shared responsibility" COM(1998) 715 final;

**HAVING REGARD TO** the European Parliament resolution on the Commission's report to the Council "Better lawmaking 1997", adopted on 18 December 1998;

**HAVING REGARD TO** the decision of its Bureau of 10 March 1999, in accordance with Article 198c para. 4 of the Treaty establishing the European Community, to issue an opinion on this matter and to instruct the Commission for Institutional Affairs to draw up this opinion;

**HAVING REGARD TO** its opinion of 11 March 1999 on the principle of subsidiarity

"Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions" (CdR 302/98 fin)<sup>1</sup>;

**HAVING REGARD TO** the draft opinion adopted by the Commission for Institutional Affairs on 27 April 1999 (CdR 50/99 rev. 1) (rapporteur: **Mercedes Bresso**);

**WHEREAS** the principle of subsidiarity, introduced into the present Article 5 of the EC Treaty by the 1992 Maastricht Treaty, is a dynamic constitutional principle designed to ensure that decisions are taken as close to the citizens of Europe as possible;

**WHEREAS** the principle of subsidiarity, as outlined in the Treaties and in Protocol No. 7 to the Amsterdam Treaty, relates to areas that are not the sole responsibility of the Communities and offers guidance on how such areas should be dealt with at Community level, while upholding the existing corpus of Community law and keeping an institutional balance;

**WHEREAS** compliance with the principle of subsidiarity is currently more important than ever in the drive to establish and confirm fuller European citizenship;

**adopted the following opinion unanimously at its 30th plenary session on 15/16 September 1999 (meeting of 15 September):**

#### 1. Introduction

1. In 1995, the scope of the Commission report to the European Council on the application of the principle of subsidiarity, presented every year since 1992, was extended. Now, in a single document, the Commission examines the efforts made to improve Community legislation, and refers both to the application of the principles of subsidiarity and proportionality, and to the issue of the quality of the drafting of texts and their dissemination.
2. The Commission considers that with the incorporation of the principles of subsidiarity and proportionality into the new Article 5 of the EC Treaty, and the adoption of the associated protocol to the Final Act of the Treaty of Amsterdam, there are now clear rules regarding their implementation; rules that the Commission is applying in advance of ratification of the protocol.
3. During 1998, better lawmaking was a constant concern of the Commission, which believes its efforts have produced tangible results. The overall number of legislative proposals has shrunk and the Commission has used its power of initiative to concentrate on priority policy objectives, by consulting the interested parties, partly via white and green papers, and communications, and by drafting provisions in the clearest, simplest and most accessible way possible.
4. Against that backdrop, and following the adoption of Protocol No. 7 on subsidiarity and proportionality and Declaration No. 39 on the quality of the drafting of Community legislation, both annexed to the Treaty of Amsterdam, political interest in the legislative process has grown substantially. Both the Cardiff European Council meeting in June 1998 and the informal meeting of Heads of State or Government in Pörschach in October underlined the central role of subsidiarity in the Union's democratic credentials.
5. As reflected in the title to the Commission report, better lawmaking is the joint responsibility of all the Community's legislative bodies, and none of them can shirk

accountability to the public.

That responsibility also involves the Member States, which should redouble their efforts to simplify national legislation and to adopt Community directives properly and swiftly.

6. If the work done on better lawmaking is to be taken up across the board, an effort must also be made in the area of information and PR, using the new technologies to the full.
7. All the parties actively involved in the Community's legislative process should work together to explain who does what in the European Union, so as to help the public understand the value of taking action on a European scale. Support from the public for European integration depends on the transparency of authority and the ability to pinpoint where responsibility lies.

## 2. General comments

### 1. An opinion to pave the way ahead

1. Following the conclusions of the Vienna European Council meeting of 11 and 12 December 1998, where it was agreed that the Commission's future reports on subsidiarity should be produced in time to allow for detailed discussions, not least within the Committee of the Regions, the Committee has had its first opportunity to study the Commission's annual "Better lawmaking" report to the European Council.
2. The Committee stresses the importance of this opinion, which paves the way ahead and is essentially the forerunner of the future consultation procedure on the annual subsidiarity report provided for in the Vienna conclusions.
3. Application of the principles of subsidiarity and proportionality is now the benchmark for all EU legislation in areas that are not the sole responsibility of the Union.
4. In its own-initiative Opinion of 11 March 1999 on the principle of subsidiarity, "Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions"<sup>2</sup> (CdR 302/98 fin) the Committee recalled that, from the start, it has aimed to be the guardian of subsidiarity. The Committee has always argued the case for strong but lean and efficient European institutions, focused on areas of responsibility that other levels of government, directly accountable to the public, are unable to address effectively.
5. It would therefore make no sense at all if the institution that brings together representatives of local and regional authorities, and is the natural champion of subsidiarity, were not consulted on a report about a legislative process inspired by and applied on the basis of subsidiarity.
6. The Committee therefore welcomes the elimination of this anomaly in the consultation procedure.

### 2. The principles of subsidiarity and proportionality

1. In the "Better lawmaking - a shared responsibility" report, the Commission describes subsidiarity and proportionality as "clear and codified principles". Before explaining what subsidiarity is, it begins by describing what it is not.
2. The report states that these are evolutionary principles, and that the Union's areas of responsibility should not be set in stone. New dynamism should be injected, i.e. action should be taken or not taken, reasons for that action or abstention should be specified, and more detailed information should be provided on the terms and extent of action.
3. The Committee agrees with the Commission on the dynamic nature of subsidiarity, in that the Community's action may be expanded or reduced in line with circumstances, always remaining within the limits of the objectives and powers laid down by the Treaties.

In this connection the Committee considers that a debate should be launched as soon as possible on the division of responsibilities so as to ensure that scope remains to develop the discretionary powers of local and regional authorities in the Member States, and calls for this matter to be addressed at the next intergovernmental conference.

4. The COR believes that the subsidiarity principle is a governing principle of the relationship between the European Union, the Member States and local and regional authorities. The definition contained in Article 5 should therefore apply to relations between the Community, the Member States and the local and regional authorities, without prejudice to the fact that the relations between regional and local authorities and the Member States is governed by individual constitutions.
5. On the other hand, the treaty provides for decisions to be taken at the level closest to the public, and that does not necessarily mean the national level. Subsidiarity has thus been confirmed as the principle of proximity and efficacy. It follows that subsidiarity should apply also to the relationship with local and regional authorities, the implication being that Member States should leave to local and regional authorities responsibilities and decisions that the latter are best placed to take.
6. Time and again, during the revision of the Treaties, the Committee has called for the establishment of legal and political guarantees of the full application of the principle of subsidiarity. But so far it has gone unheeded, even in the Treaty of Amsterdam.
7. In the Committee's view, guarantees encompassing regional and local authorities would guard against the risk of Member States using subsidiarity as an excuse for renationalising Community policies.
8. The Committee believes that the principles of proximity and efficacy could be reached by redefining the powers of the European Union, so that responsibility can be redistributed or shared, not just between the Community and Member States, but also between the other levels. Preference should be given to the level best able to make effective decisions and involve ordinary people in European integration. Here it must be remembered that the administrative implementation of Community law is primarily the task of the Member States, in accordance with

their constitutional provisions.

We must examine how powers are allocated to and shared between all parties concerned, in order to guarantee consistency and to give subsidiarity a genuinely developing and proactive dimension.

9. The Committee remains convinced that assiduous application of the subsidiarity principle is more important than ever, given the need to establish and assert fuller European citizenship.
10. The Committee reiterates its belief that European solidarity complements the subsidiarity principle and is a fundamental value of the European Social Model.

### 3. Specific comments

1. The Committee holds that using one and the same document to address the application of subsidiarity and proportionality and problems relating to the form of legal instruments diminishes the scope for detailed analysis and discussion of the two issues, which are barely related though equally essential for bringing the European Union closer to the general public.
2. The Committee appreciates the efforts made by the Commission to comply with the subsidiarity principle, in the exercise of its legislative and regulatory powers, by withdrawing many proposals and reducing the number of new proposals. The Commission should therefore concentrate on the truly European issues assigned to it by the Treaties and refrain from intervening in fields which are a matter for regional or local authorities and which are clearly better dealt with by levels of government closer to citizens.
3. European decisions must be taken in such a way that the greatest possible scope is left for Member States, regional and local decision-making: the Committee stresses the need to limit European legislation as far as possible to framework directives, which, while laying down harmonization objectives, leave the regulatory aspects to lower levels. Harmonisation that is too precise at a European level may have major repercussions on local authorities both in terms of their powers and their capacity to adapt.
4. In this respect, the Committee repeats the need to give priority to directives over regulations, thus enabling Member States and local and regional authorities to choose the most appropriate legislative instruments with which to achieve the objectives set at European level, on the basis of their respective situations.
5. The Committee points out that it would be a good idea to review the nomenclature of Community acts and introduce a hierarchy of rules. This point was also made by the European Parliament resolution of 18 December 1998 on the 1997 "Better lawmaking" report.
6. The Committee takes the view that, formally, the regions and local authorities are concerned by Community legislation by virtue of their dual position as executors of the acts, empowered in some cases to implement legislation, and as conduits of information for local authorities lower down the ladder and for the public.

7. The Green Paper on public sector information in the information society reiterates the importance of public access to information and the role of the public sector. Increasingly, local authorities are required to ensure a general access to information responding to the public desire to know more about the European Union; a desire confirmed by Eurobarometer surveys.

The Committee maintains that the growing role of the regions and local authorities as information channels should be taken into account in future Commission documents.

Here the Committee would refer to the opinion on "Eurotraining for Local and Regional Authorities in Europe"<sup>3</sup>, in which it calls on the Commission to establish a programme specifically to ensure that regional and local politicians and officials receive further training so as to place them in a position to meet their information obligations.

8. The Committee welcomes the Commission's reference to fostering broad, open and constructive dialogue with the parties directly affected by Community legislation, but regrets that regional and local government are not referred to in the list of partners, despite the key role that our spheres of government play in European life. The Committee believes that it and the recognised associations of regional and local government should be consulted, as a matter of duty and course, on all major issues that affect us and the citizens whom we represent.
9. It is therefore with great interest that the Committee notes the common guidelines for the drafting quality of legislative instruments<sup>4</sup>.
10. The Committee appreciates the simplification measures taken since the Edinburgh Council with the SLIM programme and the BEST taskforce, but believes that a further effort is required in conjunction with the Member States, if rapid progress is to be made in this area.
11. In many cases codification and consolidation is essential to render Community legislation accessible. The Committee invites the Commission to speed up this process and to do its utmost to conclude the interinstitutional agreement it wants as rapidly as possible.
12. The Committee would stress that the full potential of advanced technological equipment must be developed rapidly. As the figures in the Commission report show, the highly useful Europa server has reached saturation point owing to the massive number of hits, making it almost inaccessible within a reasonable time frame, via the facilities generally available to the public. The same applies to a number of service databases. On the other hand, fees to access these databanks should not exceed production costs.
13. The Committee calls on the Commission to tailor these tools to meet the desire of a growing number of people to establish contact with the European Union through its server.
14. It is also essential that EU technological choices comply fully with the rules of free competition and guarantee access to all citizens, regardless of their IT systems.
15. The Committee reiterates the need to redouble efforts to upgrade information

networks, working, as is often already the case, with local authorities, and stepping up the dissemination of publications and information through those channels.

16. The Committee supports the Commission's emphasis on interinstitutional cooperation for the purposes of improving lawmaking; but believes that this requires a revision of the Union's legislative procedures and a clarification of the powers of each institution.

Brussels, 15 September 1999

The President

The Acting Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

**Manfred Dammeyer**

**Vincenzo Falcone**

<sup>1</sup> OJ C 198 of 14.7.1999, p. 73

<sup>2</sup> OJ C 198 of 14.7.1999, p. 73

<sup>3</sup> (CdR 404/98 fin) OJ C 198 of 14.7.1999, p. 68

<sup>4</sup> OJ C 73 of 17.3.1999

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